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Supreme Court, U.S.
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No. 95-190

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

DAVID R. KNAPP and GRK CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY BRIEF

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TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

The petitioners, DAVID R. KNAPP and GRK CORPORATION, respectfully pray that a writ of Certiorari

issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on April 15, 1995.

On August 1, 1995, petitioners filed a petition for writ of Certiorari. The Government requested and obtained two extensions of time within which to reply to the petition. The Government asserts in its response that Certiorari should be granted as to the first question presented. Petitioners respond herein to the reasons erroneously asserted by the Government pertaining to its claim that Certiorari should be denied as to the remaining issues presented in the petition.

THE GOVERNMENT ERRONEOUSLY REPRESENTS THAT ISSUES RAISED IN THE PETITION WERE NOT PRESENTED TO THE COURT OF APPEALS

All six issues presented in the petition were initially raised before the Court of Appeals. The Government asserts in its brief at page 11 that petitioner KNAPP now argues that the jury instruction on the conspiracy charge failed to inform the jury that he could be convicted only if he knew that the object of the conspiracy was unlawful, but failed to raise the argument in his appellate briefs. The Government is in error.

This particular issue was raised in appellant's opening brief to the Ninth Circuit Court of Appeal at pages 13 through 14; in appellant's reply brief to the Ninth Circuit Court of Appeal at page 5, lines 14 through 20, page 6, lines 20 through 26, and page 7, line 27, to page 8, line 6; and in the petition for rehearing to the Ninth Circuit Court of Appeal at page 5, lines 7 through 16.

The Court of Appeals' decision obliquely addressed

this issue when addressing petitioners' argument pertaining to lack of unanimity in relation to the conspiracy instruction given (Appendix A to Petition at page 7).

THE GOVERNMENT'S REPLY HAS RECAST AND DELETED ISSUES PRESENTED FOR REVIEW

Six issues are presented in the petition. They all relate to the same type of structural error at trial in that the jury was improperly instructed on the elements of the crimes of filing a false currency transaction, money laundering, and conspiracy to money launder. The Government has reworded the issues presented, and in doing so, obfuscates the similarity of the remaining issues presented to the one issue upon which they agree that Certiorari should be granted.

The Government has reduced the six issues presented in the petition to four. It has deleted the issue pertaining to the appropriate standard of review of jury instructional error pertaining to omitting elements of the crimes from the instructions. It then cites United States v. Olano 113 S.Ct. 1770 (1993) in support of its contention that the instructional error raised in the petition does not warrant reversal as they do not result in a miscarriage of justice. United States v. Olano is inapposite, as the Court was careful to note that the case did not address those errors that should be presumed prejudicial (113 S.Ct. at 1778). Presumed, or structural error, is the type of error presented in each of the issues set forth in the petition for writ of Certiorari (Sullivan v. Louisiana 508 U.S. ___, 113 S.Ct. 2078 [1993], United States v. Gaudin 115 S.Ct. 2310 [1995]).

CONCLUSION

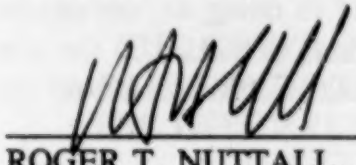
The Government acknowledges that the petition for

a writ of Certiorari should be granted as to the first question presented in the petition. As the remaining questions presented in the petition address the same type of structural error, petitioners DAVID R. KNAPP and GRK CORPORATION submit that the petition for a writ of Certiorari should be granted.

Respectfully submitted,

NUTTALL BERMAN ATTORNEYS

DATED: October 25, 1995



ROGER T. NUTTALL, Attorney for Petitioners

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

ROGER T. NUTTALL, being first duly sworn, deposes and says:

That he is a member of the Bar of the Supreme Court of the United States;

That on October ~~24~~ 25, 1995, the Petitioners' Reply Brief in the above-

entitled case, and this proof of service were deposited in a United States Post Office mail box located in Fresno, California, with first class postage prepaid, properly addressed to the clerk of the Supreme Court of the United States and within the time allowed for filing said reply brief;

That an additional copy of this reply breif and proof of service of mailing of the reply brief was served on counsel for respondent:

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Executed at Fresno, California, this 25th day of October, 1995.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

ROGER T. NUTTALL, Attorney for Petitioners